

Service Date: September 25, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION
P.O. Box 202601
Helena, Montana 59620-2601

In the Matter of the Application of Thomas)	TRANSPORTATION DIVISION
S. Bandstra, dba Mountain Wind)	DOCKET NO. T-06.25.PCN
Construction, for Class D Operating)	ORDER NO. 6775
Authority.)	

ORDER ON MOTION

Introduction and Background

On July 24, 2006 Thomas S. Bandstra, dba Mountain Wind Construction (Mountain Wind), completed an application to the Public Service Commission (Commission) for a Certificate of Public Convenience and Necessity, Class D. See § 69-12-314, MCA. Notice of the application was served as part of the Commission's Transportation Division monthly notice on August 10, 2006. The notice stated that protests to the application were to be mailed on or before August 29, 2006, and that if no protests were received by that date, "...the Commission may issue a final order on the application without public hearing, pursuant to Section 69-12-321, MCA." The notice further stated that if a protest is timely received, "...a public hearing will be scheduled."

On August 24, 2006 the Commission received from Frank Crowley, an attorney representing Allied Waste Services of North America, LLC (Allied), a letter protesting the Mountain Wind application on behalf of Allied, a holder of Class D operating authority. The letter was addressed to "Mr. Greg Jergeson, Chair/Montana Public Service Commission"; and after the letter was time and date stamped it was placed with Mr. Jergeson's in-coming mail at the Commission offices.

After August 29, 2006, Commission Transportation Division staff, unaware of the protest letter sent to Mr. Jergeson, placed the Mountain Wind application as an action item on the Transportation/Centralized Services Division Agenda No. 06-09-07, published on August 31, 2006, for action at the Commission's September 7, 2006 meeting. Staff recommended that the Mountain Wind application be granted.

On seeing the action item on the August 31, 2006 Commission Transportation agenda, someone from Allied called Transportation Division staff to advise of the protest letter mailed to Mr. Jergeson. Staff searched and found the letter on Mr. Jergeson's desk. The letter indicates that Allied protests the Mountain Wind application, but does not contain certain information nor include a specified protest fee, both as required by Commission rules. See ARM 38.3.402 and 405. On August 31, 2006 Allied filed a Motion for Extension of Time to Supplement Protest and for Expedited Consideration of Motion. In response, the Commission pulled the September 7, 2006 action item pending a decision on the Allied Motion. Mountain Wind filed an Objection to Motion on September 7, 2006, and Allied filed a Reply on September 12, 2006.

DISCUSSION

Allied's Motion presents the Commission with a very difficult decision. If Allied had merely forgotten or ignored the clearly noticed deadline to file a protest, and were asking the Commission to make an exception, the decision would be simpler, and the request likely not well received. Allied did, however, timely file an objection to the Mountain Wind application, in the form of the letter to Chairman Jergeson described above. The letter was not a valid protest to the application because it lacked certain information required by Commission rule; and it was not accompanied by a filing fee. Moreover, it was inexplicably addressed to Chairman Jergeson, not

the Commission through its Transportation Division staff, and logically ended on Mr. Jergeson's desk, where it remained undiscovered until too late. It would not be unlawful or unreasonable for the Commission to find the Mountain Wind application unprotested, and grant it on that basis.

On balance, however, the Commission finds that the best decision under these circumstances is to grant Allied additional time to complete a protest to the application. Allied did file a complete protest and paid the fee by August 31, 2006, and the Commission finds that protest valid for purposes of taking the Mountain Wind application to hearing. The primary reason for so finding is that a hard copy letter indicating an intent to protest was received at Commission offices before the deadline. Other forms of intent (e.g., e-mail or telephone) may not have sufficed. The fact that the letter "protest" was mailed conforms to the Commission notice, and is important. The deficiencies in the letter "protest" are excusable, barely, by the lack of complete clarity in the August 10, 2006 notice. The notice does not refer to the particular Commission administrative rules that describe the contents and requirements of a valid protest (ARM 38.3.401, et seq.); and the notice does not specify a particular form of address at the Commission for written protests. The Commission will hasten to clarify its notice.

CONCLUSIONS OF LAW

1. The Commission regulates "motor carriers" as defined at § 69-12-101(8), MCA, and as described at Title 69, Chapter 12, MCA.
2. The Commission regulates Class D Motor Carriers. See §§ 69-12-101(6) and 301(5).

3. Class D carriers conduct operations pursuant to authority issued by the Commission, after application according to State statute and requirements of the Commission. § 69-12-314, MCA, and Title 69, Chapter 12, passim.

4. The Commission may determine when a valid protest to a motor carrier authority application has been filed at the Commission. §§ 69-12-314(1), 321(1), MCA.

ORDER

Under the particular facts described above, the late protest by Allied, filed on August 31, 2006, to the motor carrier application of Mountain Wind, is a valid protest, and sufficient for the Commission to take the application to hearing. To that extent, Allied's Motion is granted.

Done and dated this 13th day of September, 2006, by a vote of 3 to 2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman, voting to dissent

BRAD MOLNAR, Vice Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner, voting to dissent

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Order on Motion issued in Docket T-06.25.PCN in the matter of the application of Thomas S. Bandstra, dba Mountain Wind Construction, Livingston, Montana has today been sent to all parties listed.

MAILING DATE: September 25, 2006

FOR THE COMMISSION

FIRST CLASS MAIL

Thomas S. Bandstra
dba Mountain Wind Construction
10 Coulee Drive
Livingston, MT 59047

Allied Waste Services of North America LLC
Mr. Max Bauer
PO Box 8449
Missoula, MT 59807

Mr. Frank Crowley
Attorney at Law
PO Box 1185
Helena, MT 59624-1185

AS ITS INTERESTS MAY APPEAR:

Montana Consumer Counsel
616 Helena Avenue
P.O. Box 201703
Helena, MT 59620-1703